

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 972
Z.C. Case No. 01-33
(Proposed Text Amendment to Establish New High-Density Residential Retail Overlay)
January 12, 2004

ORDER DENYING PETITION

This Zoning Commission proceeding arose out of a different case, Case No. 00-27M, which involved a petition to amend the zoning map for certain portions of Square 37 to resolve inconsistencies with the Comprehensive Plan for the National Capital ("Comprehensive Plan") and the D.C. Code. In Case No. 00-27M, the petitioner's lot, as well as six (6) other lots in the southern half of Square 37, are zoned R-5-B, but are designated on the Generalized Land Use Map for high-density residential and medium-density commercial uses. Since the constraints of R-5-B zoning allow only low- to moderate-density residential development and do not allow principal commercial uses, such zoning does not permit the types and intensity of development that are called for by the Generalized Land Use Map designation. The petitioner requested that the southern half of Square 37 be re-zoned C-2-C, CR, or some other appropriate intermediate zone district. The Office of Planning ("OP"), however, feared that rezoning to one of these commercial districts would result in excessive commercial development, with a concomitant loss of residential opportunities.

OP concluded that the Zoning Commission had only two existing alternatives to bring the zoning into harmony with areas designated for mixed-use on the Generalized Land Use Map: 1) it could map part of the area residential and part commercial, or 2) it could map the entire area commercial, which would still permit residential uses. Practically speaking, however, once land is zoned commercial, the value of the land tends to increase and it becomes less likely that it will be developed for residential uses. OP, therefore, decided to propose a third alternative, a floating overlay zone that would mandate a certain amount of commercial uses within the least restrictive residential districts, R-5-D and R-5-E. This overlay was called the High-Density Residential Retail Overlay ("HARR") and was presented to the Zoning Commission in OP's November 15, 2001, set down report.

On November 25, 2001, the Zoning Commission set down HARR, Case No. 01-33, for public hearing. The original HARR text was advertised on June 7, 2003, at 49 DCR 5163, and the public hearing was set for July 29, 2002. Even before the hearing, OP began receiving negative feedback on the text. At the hearing, which was continued until September 6, 2002, virtually no one spoke in favor of the text as it was then constituted. Questions were raised about many of the technical aspects of the proposed Overlay, such as the requirement that at least 50% of the ground floor of certain buildings be reserved for commercial uses, the required commercial

density, and the lot occupancy permitted. One of the major objections of participants was that the commercial uses within the residential buildings in the HDRR Overlay were to be mandatory and not discretionary. The most common concern, however, was that the Overlay would encourage commercial uses and drive out residential uses.

The Zoning Commission itself found the text prolix and felt that the changes already made to it made it sufficiently different from the text originally advertised that a second hearing, with re-advertisement, was required. First, however, at its September 9, 2002, meeting, the Commission asked OP to further explain certain aspects of the Overlay and to elaborate on where in the District OP felt this Overlay might be appropriately mapped.

For approximately one year, between September 2002, and August 2003, OP continued meeting with the community concerning HDRR, worked to refine the HDRR text, and prepared a response to the Commission's question as to its applicability. A significantly re-worked HDRR text was published on August 29, 2003, at 50 DCR 7167. OP filed a report with the Zoning Commission dated October 31, 2003, recommending still further changes. A public hearing on the newly advertised text was held on November 13, 2003.

At the November 2003 hearing, many of the same concerns arose as at the first hearing in July 2002. The complaint of mandatory versus discretionary commercial uses was reiterated, and several participants testified that HDRR would displace "thousands of tenants," "drastically change [the] residential density mix of neighborhoods," and "create serious traffic congestion problems." The case was put forth that there is already a significant amount of vacant retail space in the District and that this space should be filled before new retail space is mandated. Individuals also expressed concerns as to how HDRR's provisions would affect historic properties. Hearing participants complained generally about a lack of supporting data and analysis behind the HDRR concept and specifically about individual provisions of the text, such as the mandatory 15-foot ceiling height for first-floor retail.

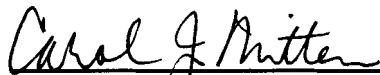
The Commission is supportive of the intent of the HDRR Overlay as an additional tool to address the competing interests of residential and commercial uses in areas designated for mixed use. The Overlay was not proposed for any particular land area, but would have been established in the future, where appropriate. Of course, its establishment in any area would have been subject to public hearings, and many of the concerns voiced could have been addressed during these public hearings. It was never the intent of the Commission to arbitrarily "plop down" the HDRR Overlay willy-nilly throughout the city without first doing the proper thoughtful analysis as to each particular area.

That said, however, the Commission is not, at this point, particularly sanguine about the specific proposed HDRR text and its application. The text has undergone many significant changes, not all of which help to clarify its meaning. The language of the text is still therefore, in some cases, unclear. What is clear is that there exists substantial opposition to the HDRR concept and text. The concept has caused much fear of development in residential communities, and it appears that the time is not ripe for its implementation.


In consideration of all the above, the Zoning Commission for the District of Columbia hereby **ORDERS DENIAL** of Case No 01-33, the petition of OP for a text amendment to Chapters 3 and 13 of Title 11 of the District Columbia Municipal Regulations, to establish a new Overlay, the High-Density Residential Retail Overlay.

VOTE: At the public meeting held on January 12, 2004, the Zoning Commission voted to **DENY** the petition, by a vote of 4-0-1 (Carol J. Mitten, Peter G. May, Anthony J. Hood, and John G. Parsons to deny; James H. Hannaham not present, not voting.)

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register, that is, on MAY 07 2004.



CAROL J. MITTEN
Chairman
Zoning Commission


JERRILY R. KRESS
Director
Office of Zoning